establish his innocence of the crime and as such found him guilty and convicted him."

That, to my mind, is a misdirection. It is a cardinal principle in criminal law that the prosecution must prove the guilt of the accused, and there is no duty cast on an accused person to establish his innocence. As stated by Raja Azlan Shah J. (as he then was) in *Tan Foo Su* v. *Public Prosecutor*: [1]

"But it is not the duty of the accused person to prove his innocence, far less to produce or to bring a particular witness to support his story. Failure of the defence to produce a particular witness must not be made the subject of adverse comment by the court, otherwise it would amount to a misdirection."

As far as the second appellant is concerned, in my view, even if he was present at the scene of the crime, the mere fact of presence alone is not sufficient to connect him with the crime.

The learned President also made similar misdirection in the course of dealing with the defence of alibi of the third appellant. This is what he said:

"Again accused No. 3 did not produce any witnesses to corroborate his story. I found that he failed to create a doubt in my mind and accordingly found him guilty of the offence charged and convicted him."

From his grounds of judgment, it is clear that the learned President had misdirected himself in law by requiring corroboration of the defence story. There is no duty cast upon the defence in a criminal trial to call any witness and no adverse presumption should arise against an accused person for failure to call any particular witness.

In the circumstances, the appeal of the second and third appellants are allowed. The conviction and sentence are set aside, and the fine imposed, if already paid by the appellants, should be refunded to them.

Order accordingly.

Solicitors: *Manuel & Segran; Inderjit Singh.*

DOSHI v. YEOH TIONG LAY

[F.C. (Gill C.J. (Malaya), Raja Azlan Shah and Wan Suleiman F.J.J.) November 2, 1974]

[Kuala Lumpur — Federal Court Civil Appeal No. 117 of 1973]

Land Law — Transfer of property — Allegation that registered proprietor was party or privy to fraud — Actual fraud — Constructive fraud — Loan agreement in contravention of Moneylenders Ordinance — Agreement unenforceable — Even if void effective to vest title in registered proprietor — National Land Code.

Practice and Procedure — Application to enter final judgment — Principles applicable — R.S.C. 1957, O. 14.

The facts in this case were that the appellant was formerly the registered owner of premises in Kuala Lumpur. He obtained a loan of $130,000 from one Chooi Mun Sou and as collateral security for repayment of the loan, he deposited with the lender his documents of title to the premises and another piece of land belonging to him, together with two blank transfer forms duly executed by him. The loan was to be repaid together with interest thereon at 10% per annum within three months. The appellant having failed to repay the said loan, Chooi Mun Sou transferred the premises to Equitable Nominees Sendirian Berhad for a consideration of $100,000. Subsequently, Equitable Nominees sold and transferred the land to the respondent, who paid 10% of the purchase price and charged the premises to Equitable Nominees to secure payment of the balance of the purchase price. The respondent became the registered owner of the premises and subsequently gave written notice to the appellant to quit and deliver possession of the premises. The appellant having failed to comply with the demand, the respondent brought the action for recovery of possession. He applied for leave to enter final judgment against the appellant and this was opposed by the appellant. The appellant's contention before the High Court was that the loan agreement was a moneylending transaction and therefore in the circumstances illegal and unenforceable that Chooi Mun Sou and his wife were the sole shareholders and directors of Equitable Nominees and that the transfer to the company was void and constituted a fraud on the appellant; that as Chooi Mun Sou was the solicitor of the respondent his knowledge of the previous transaction must be imputed to the respondent; and that therefore the respondent had procured himself to be registered as proprietor of the premises in a manner which made it liable to be set aside. The appellant therefore asked that he be given unconditional leave to defend. The learned judge in the High Court granted leave to the respondent to enter final judgment and the appellant appealed.

Held: (1) in the circumstances the learned judge was quite right in holding that there were no issues of fact to be tried in court so that to that extent the appellant was not entitled to unconditional leave to defend;

(2) in this case the solicitor's knowledge of the fraud could not be imputed to the respondent;

(3) the doctrine of constructive notice is inapplicable to systems of registration in relation to transactions where priority and notice are governed by priority in or the fact of registration and the court will not readily apply the doctrine where the effect would be to invalidate a transaction in relation to the sale of land;

(4) even if the loan agreement was void as it was a moneylending transaction, the registration of the transfer to the respondent was effective to vest title in him as a registered proprietor notwithstanding that he acquired his interest under an instrument that was void;

(5) in the circumstances the learned judge had exercised his discretion correctly in ordering final judgment to be entered against the appellant.

Cases referred to:-

(1) *Roberts* v. *Plant* [1895] 1 Q.B. 597.

(2) *Evelyn Soh Hee Li* v. *Gan Tick Sun* [1959] M.L.J. 146, 148.

(3) *Wong See Leng* v. *C. Saraswathy Ammal* [1954] M.L.J. 141, 143.

(4) *Haji Abdul Rahman* v. *Mohamad Hassan* [1917] A.C. 209, 216.

(5) *Rolland* v. *Hart* (1870) Ch. App. 678, 681.

(6) *Stuart* v. *Kingston* (1923) 32 C.L.R. 309.

(7) *Bradley* v. *Riches* (1878) 9 Ch. D. 189.

(8) *Le Neve* v. *Le Neve* (1747) Amb. 436, 26 E.R. 1172.

(9) *Morland* v. *Hales and Somerville* (1911) 30 N.Z.L.R. 201.

(10) *Assets Co. Ltd.* v. *Mere Roihie* [1905] A.C. 176.

(11) *Tuck Guat Choo alias Ting Guat Choo* v. *Cheah Ah Hoe and Yong Pow Meng* [1932] M.L.J. 109.

(12) *Fraser* v. *Walker* [1967] 1 All E.R. 649.

(13) *Breskvar* v. *Wall* (1972) 46 A.L.J.R. 68, 70.

(14) *Culver* v. *Beard* [1937] 1 All E.R. 301, 306.

(15) *Hodges* v. *Harland & Wolff Ltd.* [1965] 1 W.L.R. 523, 526.

FEDERAL COURT.

R. R. Sethu for the appellant.

Lim Kean Chye for the respondent.

Gill C.J.: This is an appeal by the defendant in the action from an order of Abdul Hamid J. granting leave to the respondent as plaintiff to enter final judgment on his claim against the defendant for the recovery of vacant possession of factory premises situate on land held under Q.T.(R) 1107 for Lot No. P.J. 2143/62 in the township of Petaling Jaya (hereinafter referred to as "the premises".)

The facts of the case are that the defendant was formerly the registered owner of the premises, and of another piece of land with a dwelling house thereon in the township of Kuala Lumpur. Under an agreement dated June 1, 1970 he obtained a loan of $130,000 from one Chooi Mun Sou. As collateral security for repayment of the loan, he deposited with the lender his documents of title to the premises and the other piece of land, together with two blank transfer form duly executed by him.

The loan was to be repaid together with interest thereon at 10% per annum within 3 months, failing which the agreement empowered the lender to sell the said lands or any one of them either by public auction or by private contract so as to realise an amount sufficient to repay the loan together with interest, and for this purpose to make use of the transfers executed by the borrower as aforesaid.

The defendant having failed to repay the said loan as agreed, Chooi Mun Sou on or about March 31, 1972, in the exercise of his right under the agreement, transferred the premises to Equitable Nominees Sendiran Berhad for a consideration of $100,000. On or about June 9, 1972 Equitable Nominees sold and transferred the premises for $120,000 to the plaintiff who paid 10% of the purchase price and charged the premises to Equitable Nominees to secure payment of the balance of the purchase price. The other piece of land was similarly transferred to Equitable Nominees for a consideration of $45,000, and Equitable Nominees sold it to one Sushila Menon for $55,000. This other piece of land, however, does not form part of the subject matter of the action with which we are now concerned.

The plaintiff became the registered owner of the premises on June 26, 1972. Thereafter he demanded of the defendant orally and by written notice dated August 7, 1972 to quit and deliver vacant possession of the premises. The defendant having failed to comply with the demand, the plaintiff bought this action for recovery of possession by a specially indorsed writ dated August 25, 1972 when the defendant was alleged to be in wrongful possession.

On September 27, 1972 the plaintiff made an application by way of summons-in-Chambers for summary judgment under Order 14 of the Rules of the Supreme Court, 1957. The application was supported by his affidavit verifying his course of action and stating that he verily believed that there was no defence to the action except as to the amount of mesne profits and damages.

The defendant opposed the plaintiff's application and asked for unconditional leave to defend the action by filing an affidavit to which were exhibited his statement of defence and counterclaim. He then filed an additional affidavit to which were exhibited the loan agreement, the transfer documents from himself to Equitable Nominees and from Equitable Nominees to the plaintiff, and the charge from the plaintiff to Equitable Nominees. The gist of his main affidavit is that the plaintiff procured himself to be registered as proprietor of the premises in a manner which made it liable to be set aside, or that he held the premises subject to the defendant's right of redemption as set out in his defence and counterclaim.

The substance of the defendant's statement of defence is as follows. First, as Chooi Mun Sou was charging interest without being licensed under the Moneylenders Ordinance, the loan agreement under which the purported transfers were effected was illegal and unenforceable under the provisions of the Ordinance. Secondly, Chooi Mun Sou and his wife were the sole shareholders and directors of Equitable Nominees, so that prior to and at the time of the purported transfer of the premises from the defendant to the Nominee Company, the Company had knowledge of the illegality of the transaction, with the result that the purported transfer was void. Thirdly, the market value of the premises was not less than $150,000, so that the purported consideration of $100,000 for the transfer to the company was to the knowledge of Chooi Mun Sou and the company a fraud on the defendant. Fourthly, the form of transfer executed by the defendant on June 1, 1970 was falsely dated and attested as if the defendant had executed it on November 1, 1971 and was therefore of no legal effect. Fifthly, the transfer from the company to the plaintiff was void, as prior to or at the time of the transfer the plaintiff by himself or by his agent had knowledge of the facts constituting illegality and fraud as aforesaid. Lastly, and in the alternative, Chooi Mun Sou caused the premises to be transferred to the plaintiff to defeat the defendant's right of redemption, thereby committing a fraud on the defendant, so that in any event the company held and the plaintiff holds the premises subject to the defendant's right of redemption.

In his counterclaim the defendant cited Equitable Nominees and Chooi Mun Sou as second and third defendants respectively, and, having repeated what he says in his defence, asked for an order declaring the loan transaction to be void and setting aside the transfer to the plaintiff. In the alternative, as plaintiff in the counter claim he asked for a declaration that he is entitled to redeem the premises upon his paying to the second and third defendants such sums as may be found due on the loan transaction together with such interest as the court may allow, and for certain consequential reliefs.

As stated in his grounds of judgment, in dealing with the matters before him the learned judge first examined the principles of law governing an application to enter final judgment under R.S.C. Order 14. He considered the case of *Roberts* v. *Plant*[1] which is often cited for the proposition that the purpose of Order 14 is to enable a plaintiff to obtain summary judgment without trial if he can prove his case clearly, and that if the defendant is unable to set up a *bona fide* defence or raise an issue against the claim which

ought to be tried, final judgment should be allowed. He also considered the case of *Evelyn Soh Hee Li* v. *Gan Tick Sun*[2] in which Rigby J. said that under Order 14 it is sufficient for the defendant, in order to entitle him to defend the action, to raise a triable issue on its merits and that leave to defend ought to be given unless there is clearly no defence in law and no possibility of a real defence on a question of fact. He further directed his mind to the rule that where there is a counterclaim the court is inclined to give leave to defend if a defendant has a *bona fide* counterclaim which appears to contain some good grounds for argument and is connected with the subject-matter of the plaintiff's claim.

Turning next to the merits of the case, the learned judge took the view that as the plaintiff was for the time being the registered proprietor of the premises, for his title to be defeated under section 340(2)(a) of the National Land Code, the onus was on the defendant to show that the plaintiff was a party or privy to fraud either by Chooi Mun Sou in transferring the land to the Nominee Company or by the Nominee Company in transferring the land to the plaintiff. In this connection he found that no particulars of fraud had been set out in the defence which merely alleged that at the time of the sale of the premises to him the plaintiff had knowledge of the illegality of the loan agreement and notice that the instrument of transfer from Chooi Mun Sou to the Nominee Company was void. Proceeding upon the premises that the plaintiff was an independent and *bona fide* purchaser not bound by any special relationship to either Chooi Mun Sou or the Nominee Company, he found that the defendant had failed to satisfy the court that he had a *prima facie* defence. He also found that the defendant had failed to provide any evidence to show that the plaintiff had not acted in good faith when he caused himself to be registered as proprietor.

The learned judge further found that the defendant had also failed to state how and in what manner the plaintiff had plotted or conspired to defeat the defendant's right of redemption. In this connection he agreed with counsel for the plaintiff that the defendant had no equity of redemption, and he found support for this in the passage cited by Buhagiar J. in *Wong See Leng* v. *C. Saraswathy Ammal*[3] from the judgment of the House of Lords in the case of *Haji Abdul Rahman* v. *Mohamed Hassan*[4] to the effect that the English rules in relation to equity of redemption do not apply to a system of registration of titles to land.

In regard to the purchase price, the learned judge took the view that it was insufficient for the defendant to make a bare allegation without the support of some sort of valuation or assessment to show the market value of the land at the date of sale. In the circumstances, he was unable to say that there was fraud to which the plaintiff or his servant or agent was a party or privy.

With regard to the allegation by the defendant that the instrument of transfer by Chooi Mun Sou to the Nominee Company was void as the attestation clause was false, the learned judge observed that the documents were not before the court, and, furthermore, there was nothing whatever to show that the plaintiff was a party or privy to any fraud. He also observed that the plaintiff became the registered proprietor on the presentation of an instrument of transfer which was accepted by the registering authority as an instrument fit for registration.

As regards the counterclaim, the learned judge found that the allegations therein were directed essentially against Chooi Mun Sou and the Nominee Company. Assuming that fraud, if any, was committed by either of them, the course open to the defendant was to seek a remedy against either of them or both, but that in so far as the plaintiff's claim was concerned such fraud could not defeat the plaintiff's title.

The conclusion at which the learned judge arrived was that the defendant had no defence whatever to the plaintiff's claim. He therefore held that the plaintiff was entitled to enter final judgment for possession of the premises and made an order accordingly.

The appeal to this court from that order is based on numerous grounds the essence of which is that the learned judge erred in holding that the appellant had no *bona fide* defence to the action and in failing to give sufficient and due weight to his counterclaim. Thus the fundamental questions to be determined on this appeal are, first, whether on the facts the appellant had raised any issues of fact to be tried in court, and, secondly, whether in law he has any defence to the plaintiff's action which is *prima facie* sustainable.

In so far as the first question is concerned, it is to be observed that there is no real dispute about the facts of the case. It is not alleged by the appellant, either in his affidavits or his statement of defence and counter claim, that the respondent had actual, as opposed to constructive, notice of the loan agreement or of its alleged illegality or of any fraud on the part of Chooi Mun Sou or the Nominee Company in relation to any of the transactions which resulted in the respondent becoming the registered owner of the premises. There are allegations against Chooi Mun Sou and the Nominee Company in the nature of a conspiracy to defraud the appellant, but there is no direct evidence of any sort to connect the respondent with it. In the circumstances, the learned judge to my mind was quite right in holding that there were no issues of fact to be tried in court, so that to that extent the plaintiff was not entitled to unconditional leave to defend.

That brings me to the second question as to whether the appellant has any defence or defences in law arising out of all the circumstances of the case.

It is common ground that Chooi Mun Sou and his wife were the sole directors and shareholders of the Nominee Company and that Chooi Mun Sou acted as respondent's solicitor in relation to the transfer of the premises to him by the Nominee Company. It is alleged that the loan agreement between the appellant and Chooi Mun Sou was made in contravention of the provisions of the Moneylenders Ordinance and was therefore illegal. It is also alleged that the transfer of the premises from Chooi Mun Sou to the Nominee

Company, which was in effect Chooi Mun Sou's own company, was in fraud of the appellant because the purported consideration of $100,000 for the transfer was far below the market value of the premises at the time. It is further alleged that this instrument of transfer was of no legal effect and therefore void, because it contained an attestation clause which to the knowledge of Chooi Mun Sou was false. It is therefore contended on behalf of the appellant that the knowledge of such illegality and fraud in relation to the previous transactions, which Chooi Mun Sou had as the respondent's agent, must be imputed to the respondent.

Now the general rule is that the knowledge of a solicitor is the knowledge of the client, so that it is not open to the client to say that the solicitor did not disclose the true facts to him. Thus in *Rolland* v. *Hart*,[5] which was followed by the High Court of Australia in *Stuart* v. *Kingston*,[6] Lord Hatherley L.C. said:

"Then the only question is, what is actual notice? It has been held over and over again that notice to a solicitor of a transaction, and about a matter as to which it is part of his duty to inform himself, is actual notice to the client. Mankind would not be safe if it were held that, under such circumstances, a man has not notice of that which his agent has actual notice of. The purchaser of an estate has, in ordinary cases, no personal knowledge of the title, but employs a solicitor, and can never be allowed to say that he knew nothing of some prior incumbrance because he was not told of it by his solicitor."

In *Bradley* v. *Riches*[7] it was held that the presumption that a solicitor has communicated to his client facts which he ought to have made known cannot be rebutted by proof that it was the solicitor's interest to conceal the facts.

There is, however, an important exception to the above rule in cases of fraud, which is stated in *Halsbury's* Laws of England (3rd Ed.) Vol. 14, paragraph 1019 at page 543) as follows: —

"Under the head of actual notice is included notice to an agent employed in the transaction. The notice is imputed to the principal, and it affects him wheher communicated to him or not; but an exception is admitted where there has been fraud on the part of the agent in the matter. Although actual communication to the principal is not required, yet fraud excludes in practice all probability of communication, and hence the knowledge of the fraudulent agent is not imputed to the principal."

It is thus clear that his solicitor's knowledge of fraud, if any, cannot be imputed to the respondent. I must therefore reject the appellant's contention that if the respondent had notice by his agent of the previous transactions, then his entering into an agreement to purchase the premises was tantamount to fraud.

It is contended for the appellant that if the respondent had knowledge by his agent of the illegality of the loan transaction and consequently of the transfer by Chooi Mun Sou to the Nominee Company being void, he cannot be a *bona fide* purchaser. The authority relied on for this contention is the old case of *Le Neve* v. *Le Neve*.[8] But the doctrine of constructive notice, which is all that the respondent can be said to have had in this case, is inapplicable, as a rule, to systems of registration in relation to transactions where priority and notice are governed by priority in or the fact of registration. (See 14 *Halsbury*, 3rd Ed. paragraph 1023 at page 545). Where the effect of constructive notice would be to invalidate a transaction in relation to sale of land, the court will not readily apply the doctrine. (See 14 *Halsbury*, 3rd Ed. paragraph 1022 at page 545).

It is said that the respondent cannot claim to be a purchaser for value without notice because he had not paid the full purchase price. The authority relied on for this assertion is the New Zealand case of *Morland* v. *Hales and Somerville*[9] in which it was said that Somerville could not claim as purchaser for value without notice, as his contract had not yet been completed by payment of the purchase price and the conveyance of the legal estate. But here the legal estate was conveyed to the respondent by an instrument of transfer which was duly registered. It is true that he paid only 10% of the purchase price in cash, but he executed a charge on the property to secure payment of the balance of the purchase price. It therefore cannot be said that he is not a purchaser for value.

It is next submitted on behalf of the appellant that questions as to the illegality or otherwise of the loan agreement and allegations of fraud and deceit cannot be decided on affidavits. But, as I have already said, there is no dispute as regards the facts of the case. There were no allegations of actual fraud on the part of the respondent. The learned judge had before him all the documentary evidence which is relevant to the case. It is to be observed that the loan agreement was made two years before the transfer of the premises to the respondent. It was in the light of all that evidence and on the legal arguments addressed to him on such evidence, that he had to decide whether the appellant was entitled to have leave to defend. I need hardly add that were the case to go to trial in court it would necessarily have to be decided on that documentary evidence and legal arguments arising therefrom. The utmost that could be said against the respondent is that he is guilty of constructive or equitable fraud. But it is clear that "fraud" within the meaning of the National Land Code means actual fraud and not what is known as constructive or equitable fraud. (See *Assets Co. Ltd.* v. *Mere Roihie*,[10] and *Tueh Guat Choo alias Ting Guat Choo (f)* v. *Cheah Ah Hoe and Yong Pow Meng*[11]).

The appellant's main ground of appeal is that the learned trial judge erred in law and in fact in holding that the contravention of the Moneylenders Ordinance by Chooi Mun Sou cannot affect the respondent, when in fact a contract tainted with illegality also taints all subsequent contracts flowing from it. A short answer to this ground is that the loan agreement was not illegal but merely unenforceable. I think it will be true to say that if the appellant had repaid the loan he could not recover the money on the ground that he had paid it under a contract which was unenforceable. I am also of the opinion that third parties can acquire rights where a contract is merely unenforceable and not illegal. Assuming that the loan agreement was illegal so that for that reason the transfer from Chooi Mun Sou to Equitable Nominees was void, and assuming that that transfer was also void because of the falsity of the attestation clause, registration of the

transfer from Equitable Nominees to the respondent was effective to vest title in him as a registered proprietor notwithstanding that he acquired his interest under an instrument that was void. (See *Fraser* v. *Walker.*[12] In *Breskvar* v. *Wall*[13] Barwick C.J. said:—

"The Torrens system of registered title of which the Act is a form is not a system of registration of title but a system of title by registration. That which the certificate of title describes is not the title which the registered proprietor formerly had, or which but for registration would have had. The title it certifies is not historical or derivative. It is the title which registration itself has vested in the proprietor. Consequently, a registration which results from a void instrument is effective according to the terms of the registration. It matters not what the cause or reason for which the instrument is void. The affirmation by the Privy Council in *Frazer* v. *Walker (supra)* of the decision of the Supreme Court of New Zealand in *Boyd* v. *Mayor of Wellington*, [1924] N.Z.L.R. 1174, 1223, now places that conclusion beyond question."

I must say in conclusion that an order made by a judge in the exercise of his discretion cannot be disturbed by this court unless it can be shown that in the exercise of such discretion he acted contrary to recognized principles. (See *Culver* v. *Beard.*[14]) As Lord Denning M.R. said in *Hodges* v. *Harland & Wolff Ltd.*,[15] when a judge exercises a discretion and takes all the relevant considerations into account, it is well settled that the burden is on anyone coming to this court to show that he was wrong. I can see nothing wrong in the way in which the learned judge dealt with this case in ordering final judgment to be entered against the appellant. He was also right in holding that no case had been made out of there being a valid counterclaim against the respondent.

I would dismiss this appeal with costs.

Raja Azlan Shah and **Wan Suleiman F.JJ.** concurred.

Appeal dismissed.

Solicitors: *K. Raja Nayagam & Co.; P. G. Lim & Co.*

SHEIKH ABDULLAH BIN SHEIKH MOHAMED v. KANG KOCK SENG

[F.C. (Gill C.J. (Malaya), Ali and Ong Hock Sim F.JJ.) November 28, 1974]

[Kuala Lumpur — Federal Court Civil Appeal No. 34 of 1974]

Practice and Procedure — Interrogatories — Application for leave to deliver — Matters to be considered by court — R.S.C. 1957.

In this case the appellant was a director and shareholder of a private company. He had executed documents selling and assigning his entire shareholding in the company to the first respondent. Subsequently, he brought an action for a declaration that the documents executed by him were void on the ground that he had executed them as a result of the fraud, duress and misrepresentation of the first respondent. After the close of the pleadings, the appellant applied for leave to deliver certain interrogatories to the first respondent. The learned judge who heard the application refused it on the ground that as the main question in issue was the circumstances leading to the plaintiff executing the three documents and none of the interrogatories related to that question. The appellant appealed.

Held, allowing the appeal: (1) although interrogatories must be confined to matters which are in issue, they may under some circumstances extend to facts the existence or non-existence of which is relevant to the existence or non-existence the facts directly in issue. In considering whether the interrogatories should be allowed or not the court must consider whether they are designed to obtain admissions of facts which will reduce the issues, shorten the length of the trial and thus save costs. In this case the interrogatories satisfied all these tests and should have been allowed;

(2) as interrogatory 3(e) related to the contents of documents, so that what was being asked was secondary evidence of documents it should be struck out.

Cases referred to:-

(1) *Marriott* v. *Chamberlain* (1886) 17 Q.B.D. 154.

(2) *Osram Lamp Works Ltd.* v. *Grabriel Lamp Co.* [1914] 2 Ch. 129.

(3) *Attorney-General* v. *Gaskill* (1882) 20 Ch. 519.

(4) *Leitch* v. *Abbot* [1886] 31 Ch. 374.

(5) *Lyell* v. *Kennedy (No. 1)* (1883) 8 App. Cas. 217, 228.

(6) *Ellis* v. *Ambler* (1877) 36 L.T. 410.

(7) *Wolverhampton New Waterworks Company* v. *Hawksford* (1859) 141 E.R. 283.

(8) *Robinson and Others* v. *Badgett & Co.* [1884] W.N. 94.

(9) *Sampson Morris and Ann* v. *John Edwards* (1890) 15 App. Cas. 309.

FEDERAL COURT.

N. T. Rajah (*V. Balendram* with him) for the appellant.

Peter Mooney (*C. Paramjothy* with him) for the respondent.

Gill C.J.: This was an appeal from a judgment of Syed Othman J. dismissing an application by the plaintiff in the action (the appellant) for leave to deliver certain interrogatories to the first defendant in the action (the respondent).

The plaintiff was a director and shareholder of a private company known as The United Malaysia Traders Sendirian Berhad which was formed in 1960. The other directors and shareholders of the company were the second, third and fourth defendants. All four of them held 100 shares of $10 each fully paid up in the company. The company possessed certain properties one of which was a fairly large piece of land known as the Bukit Hitam area held under mining certificate No. 2/68 Keratong in the State of Pahang.

On 6th January 1970, at the request of the first defendant, the plaintiff executed in favour of the first defendant a power of attorney and an agreement selling and assigning absolutely his entire shareholding in the company to the first defendant. He also signed on the same date a letter prepared by the first defendant resigning from the board of directors of the company.

On 7th July 1970 he brought an action in the High Court in Kuantan for a declaration that those three documents were void on the ground that he had executed them as a result of fraud, duress and misrepresentation on the part of the first defendant, and for certain consequential reliefs.

The action came up for hearing on 23rd September 1971, but it was adjourned to a date to be fixed after the plaintiff had given some evidence, as some questions arose about evidence in relation to some